

At oral argument before the Board, the respondent agreed the sole issue for Board determination was the nature and extent of claimant's disability. Respondent argues the claimant should be limited to the 2 percent functional impairment based on claimant's treating physician/surgeon's rating.

Claimant argues she continues to have problems gripping and with loss of strength in her hands. Accordingly, claimant further argues the evidence supports the ALJ's finding of a 15 percent functional impairment and requests the Board to affirm the ALJ's Award.

Because claimant returned to work for wages equal to or more than her average gross weekly wage at the time of her injury, the sole issue for Board determination is the nature and extent of her functional impairment.¹

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Ms. Coon began working full time as the Director of Health Information with the respondent in 1997. The claimant's job duties include entering the demographics, physician's orders, medications, treatment and telephone orders into the computer for 155 patients. She also enters weekly and monthly weights for each patient. The claimant is also responsible for thinning the charts and filing all doctor's orders. Claimant testified she uses the computer 90 percent of her 7-hour and 10-minute day and the remaining 10 percent is spent writing and filing paperwork.

In September 2004, the claimant began having some tingling, numbness and burning sensation in her hands which progressively worsened. She was not able to sleep at night due the shooting pains in her right hand and towards her neck. Claimant sought treatment with the occupational therapist at work who gave her some exercises to do. She told respondent about her hand problems and was referred to Dr. Breeden on February 13, 2004. Dr. Breeden diagnosed the claimant with bilateral upper extremity repetitive use syndrome with previous chronic degenerative disk disease of the cervical spine. The doctor recommended conservative treatment which included bilateral wrist splints and an ergonomic evaluation of her work station.

On April 8, 2004, the claimant underwent an EMG and nerve conduction study. The findings revealed "bilateral compression neuropathy of the median nerves at the wrist that is in the moderate range of severity." On September 2, 2004, Dr. Bradley W. Storm examined and evaluated the claimant due to numbness of both hands and pain at the base of the thumb. Dr. Storm opined the claimant's carpal tunnel syndrome was aggravated by the claimant's work activities. The doctor performed a right endoscopic carpal tunnel release on October 6, 2004, and then the left hand on November 3, 2004. The doctor released the claimant from his care on December 23, 2004. Dr. Storm did not place any restrictions on the claimant but he did opine that there was a chance of recurrence. Based

¹ See K.S.A. 44-510e(a).

on the *AMA Guides*², Dr. Storm rated claimant's bilateral carpal tunnel syndrome as 2 percent impairment to each hand which results in a 2 percent whole person impairment.

At her attorney's request, on February 22, 2005, the claimant was examined and evaluated by Dr. Michael J. Poppa, board certified through the American Osteopathic Association Board and the American Board of Independent Medical Examiners. Dr. Poppa rated claimant's left upper extremity (20 percent) including the left thumb (8 percent) as having a 22 percent impairment. The right upper extremity resulted in a 20 percent impairment due to carpal tunnel release with residuals. The left upper extremity converts to a 13 percent whole person impairment and the right upper extremity converts to a 12 percent whole person impairment. Using the *AMA Guides*, the whole person impairments combined for an overall 23 percent whole person functional impairment.

Claimant is still working for the respondent doing the same job as she had before her accident. Claimant testified she doesn't have the strength in her hands and fingers for gripping, grasping or picking up items. She further testified that she now must frequently stop working and take breaks.

Medical evidence is not essential to the establishment of the existence, nature and extent of an injured worker's disability.³ Furthermore, the finder of fact is free to consider all the evidence and decide for itself the percentage of disability.⁴

As previously noted, work disability is not an issue in this case because claimant returned to work with respondent after her surgery earning 90 percent or more of her pre-injury average weekly wage. Accordingly, claimant's entitlement to permanent partial disability benefits is based on claimant's permanent functional impairment as established by competent medical evidence and based on the fourth edition of the *AMA Guides*, if the impairment is contained therein.⁵

Both Drs. Storm and Poppa expressed opinions on claimant's permanent functional impairment rating utilizing the *AMA Guides*. Dr. Storm concluded claimant suffered a 2 percent functional impairment but did not include a specific rating for claimant's left thumb although he had provided injections to the thumb. And the doctor agreed that claimant suffered from loss of grip strength. Dr. Poppa concluded claimant suffered a 23 percent functional impairment and included a rating for the left thumb.

² American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

³ *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976).

⁴ *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

⁵ See K.S.A. 44-510e(a).

The Board finds that both of these physicians, under the circumstances and facts of this case, simply disagree as to the interpretation and application of the *AMA Guides* in determining claimant's permanent functional impairment rating. Both physicians utilized the *AMA Guides* in determining claimant's permanent functional impairment as required by statute. The Board finds that neither physician misapplied or misinterpreted the *AMA Guides* to a point that their opinions should be disregarded. These two physicians simply disagreed not only as to the interpretation as to how the *AMA Guides* should be applied but they also made different physical findings in regards to claimant's permanent condition as a result of her injuries.

The Board, therefore, concludes that both testifying physician's functional impairment ratings should be given equal weight in determining the appropriate functional impairment. Accordingly, the Board finds claimant has a 12.5 percent permanent functional impairment.

AWARD

WHEREFORE, it is the decision of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated November 3, 2005, is modified to award claimant compensation for a 12.5 percent whole person functional impairment.

The claimant is entitled to 51.88 weeks of permanent partial disability compensation at the rate of \$449 per week or \$23,294.12 for a 12.5 percent functional disability, making a total award of \$23,294.12, which is ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of March 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael J. Haight, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director